

### REMARKS

Favorable reconsideration of this application in view of the remarks to follow is respectfully requested. Since the present response raises no new issues, and in any event, places the application in better condition for consideration on appeal, entry thereof is respectfully requested.

Before addressing the specific grounds of rejection raised in the present Office Action, applicants acknowledge, with thanks, the Examiner's remarks regarding the allowability of Claims 1-3 and 5-9. The remaining pending claims, i.e., Claims 10-17 remain rejected in view of the disclosure of U.S. Patent No. 6,492,270 to Lou ("Lou").

Concerning the rejected claims, applicants have amended independent Claim 10 to positively identify that the mechanically rigid dielectric layer employed in the claimed invention is a material selected from the group consisting of SiO<sub>2</sub>, a doped silicate glass, a carbon doped oxide and SiC. Support for this amendment to Claim 10 is found at paragraphs [0029], [0034], [0075], and [0077] as well as in original Claim 12 which has been cancelled in this Response.

Applicants respectfully submit that the above amendment to Claim 10 does not raise any new issues that would require further consideration and searching by the Examiner since the claim amendment clarifies the type of material being used as the rigid dielectric which was, in part, present in original Claim 12. Applicants observe that the above amendments to the claims do not introduce new matter into the specification. Thus, entry of the amendments is respectfully requested.

In the present Office Action, Claims 10-16 and 18 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Lou. Claim 17 stands rejected under 35 U.S.C. § 103 as alleged unpatentable by the disclosure of Lou.

Turning to the rejection of Claims 10-16, and 18 under 35 U.S.C. § 102(b), it is axiomatic that anticipation under §102 requires the prior art reference to disclose every element to which it is applied. *In re King*, 801 F.2d 1324, 1326, 231 USPQ 36, 138 (Fed Cir, 1986). Thus, there must be no differences between the subject matter of the claim and the disclosure of the prior art reference. Stated another way, the reference must contain within its four corners adequate direction to practice the invention as claimed. The corollary of the rule is equally applicable: absence from the applied reference of any claimed element negates anticipation. *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Applicants respectfully submit that the disclosure of Lou does not anticipate the method recited in Claim 10 since the applied reference does not disclose the use of a mechanically rigid dielectric layer selected from the group consisting of SiO<sub>2</sub>, a doped silicate glass, a carbon doped oxide and SiC as the material that is formed atop a lower metal wiring level. In contrast, Lou discloses forming a SiN layer 250 atop a lower metal wiring level. Applicants find no teaching within Lou which would lead one skilled in the art to replace the disclosed SiN etch layer with another dielectric, let alone one of the claimed mechanically rigid dielectrics that are selected from the group consisting of SiO<sub>2</sub>, a doped silicate glass, a carbon doped oxide and SiC.

The forgoing remarks clearly demonstrate that the applied reference does not teach each and every aspect of the claimed invention as required by *King* and *Kloster Speedsteel; et. al.*, therefore the claims of the present application are not anticipated by the disclosure of Lou. Applicants respectfully submit that the instant § 102 rejection has been obviated and withdrawal thereof is respectfully requested.

Turning to the rejection of Claim 17 under 35 U.S.C. § 103, applicants submit that

Lou fails to render applicants' claimed invention, as recited in Claim 17, unpatentable for the same reasons that Lou fails to anticipate applicants' claimed invention. Applicants respectfully submit that the above remarks, concerning the deficiencies of Lou to anticipate applicants' claimed method, apply equally well to the obviousness rejection. Thus, the above remarks are incorporated herein by reference. To reiterate, Lou fails to teach or suggest the use of a mechanically rigid dielectric layer that is selected from the group consisting of SiO<sub>2</sub>, a doped silicate glass, a carbon doped oxide and SiC. Instead, Low discloses the use of a SiN etch stop 250 located above the lower wiring level.

The § 103 rejection also fails because there is no motivation in Lou which suggests modifying the method disclosed therein to include applicants' claimed method, as recited in Claim 10. The rejection is thus improper since the prior art *does not* suggest this drastic modification. The law requires that a prior art reference provide some teaching, suggestion, or motivation to make the modification obvious.

Here, there is no motivation provided in the disclosures of the applied prior art reference, or otherwise of record, which would lead one skilled in the art to modify the methods of the applied reference to provide applicants' claimed method. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 972 F.2d, 1260,1266, 23 USPQ 1780,1783-84 (Fed. Cir. 1992).

Based on the above remarks, the § 103 rejection of Claim 17 has been obviated; therefore reconsideration and withdrawal of the instant rejection are respectfully requested.

Thus, in view of the foregoing amendments and remarks, it is firmly believed that the present case is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



Leslie S. Szivos  
Registration No. 39,394

SCULLY, SCOTT, MURPHY & PRESSER  
400 Garden City Plaza, Ste. 300  
Garden City, New York 11530  
(516) 742-4343  
Customer No.: 23389  
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